IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

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BEFORE THE HONORABLE WILLIAM B. SHUBB,

CHIEF JUDGE

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DOSSEY DOUGLAS,

Plaintiff,

vs.

No. Civ. S-98-1281

THE STATE OF CALIFORNIA DEPARTMENT OF YOUTH AUTHORITY,

Defendant.

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REPORTER'S TRANSCRIPT

MOTION FOR SUMMARY JUDGMENT

MONDAY, AUGUST 23, 1999

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Reported by: KELLY O'HALLORAN, CSR #6660

APPEARANCES

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SACRAMENTO, CALIFORNIA

MONDAY, AUGUST 23, 1999, 1:30 P.M.

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THE CLERK: Civil case 98-1281; Dossey Douglas versus Department of Youth Authority. This is on for a motion for summary judgment, your Honor.

MS. LAIRD: Good afternoon, your Honor. Michelle Laird appearing on behalf of the California Youth Authority.

MR. ANTON: Good afternoon. David Anton and Margaret Roeckl on behalf of plaintiff Dossey Douglas.

THE COURT: Ms. Laird, what would you like to say in support of the motion?

MS. LAIRD: Your Honor, I'm very much inclined to pass on initial oral argument unless the Court has any specific questions to ask me or unless the Court feels that I didn't address any of the issues raised by plaintiff in his opposition adequately. I would reserve some time, however, for rebuttal, if necessary.

THE COURT: Do you agree that the plaintiff applied a second time for the same position?

MS. LAIRD: I have no evidence one way or the other regarding that, your Honor. It did not come up during my taking of his deposition, nor did the later 1998 alleged deterrence issue come up.

THE COURT: Do you have any reason to believe that he did not?

MS. LAIRD: Well, I didn't have time to follow up on that with my client. He's asserted it in his declaration under penalty of perjury. At this point I would have to accept it, although I would question whether that's relevant given that it's not for purposes of the continuing violation doctrine asserted by plaintiff. It doesn't appear that the policy was applied to him, nor that he was deterred from applying because of the policy during that time period that you're speaking of.

THE COURT: Why not?

MS. LAIRD: Well, because the cases say that the policy has to be applied, has to affect the plaintiff during the time period. And this case is different from those cases where it was simply a matter of individuals who applied but weren't, for example, called for interviews or who were deterred from applying during the 300-day or 180-day time period prior to the filling of the EEOC complaint.

In those cases, they were either deterred because of the policy or they were not hired and not allowed to apply because of the alleged systematic policy of discrimination. In this case, the plaintiff was not told that he could not fill out an application. He apparently took the test. He apparently got on the list, although we don't have any information about what rank he fell into. If he was in the first three ranks, he would be eligible for interviews and possible offer of employment. Again, that would be contingent on passing the color vision exam. But as far as we know,

the farthest that plaintiff got during this 1996 application process was applying for and taking the written exam.

THE COURT: But I thought that he's contending that the same policy prevented him the second time from getting a job.

MS. LAIRD: I don't see that that statement's made in their opposition. They simply state that he applied for the job or he applied for the written examination and took the written examination. He doesn't say that he was deterred from applying because of the policy, nor that he went over the various hurdles and actually got to that point where the color vision exam would have been administered to him.

THE COURT: All right. Well, let me find out then. Thank you. Mr. Anton.

MR. ANTON: Good afternoon, your Honor.

THE COURT: Good afternoon.

Did you learn anything about Russian law?

MR. ANTON: I have to admit I dazed over it. It was interesting that they have an arbitration court and a regular court. I couldn't figure out what the difference would be if you were -- courts hear arbitrations outside of have it. So it might just be a semantic thing.

THE COURT: It's interesting to try to understand something that's completely foreign. It's hard to get a handle on it.

MR. ANTON: Because if you're both court state systems, and one's called court and one's called arbitration, the difference, to me, loses any distinction outside of the label you give it.

THE COURT: It's a little like us trying to understand the difference between law and chancery when we don't have that kind of system.

MR. ANTON: I'm glad I passed the bar and didn't have to take that section special.

THE COURT: All right. Tell me about this case.

MR. ANTON: First, I'll just touch on the issue you brought up, and then I'll touch on some of the broader issues.

In this one, some of the timing is important to understand. Because one of the things that the state has alleged just right here and also in their papers is the issue of deterrence to apply. The timing is important to know. He applied in '94 and then was turned down in early '96 for the first job. And in that process, they said you can go through these administrative appeals, through the State Personnel Board and the like, which he did. While he's doing that appeal, he had the hearing in August of '96 with the State Personnel Board.

Late '96, they have a second job, as you call it -- actually, what I understand is that they do applications for these jobs about every two years, thousands of people apply, and they develop hiring lists from those thousands of people who apply.

And in the '94 one, he had ranked high, had gotten an early job notice, which was the one that came out in '96 and which is the subject of the appeal.

In late '96, they did, as you call it, the second job. He applied for that. They had changed the procedure a little bit. With the first one, they had a written test and an oral test. With the second one, they streamlined, cut down some of their expenses and the like, and they just did a written test. He took the written test in about, I think it's about October of '96. And before he hears anything, he finds out that --

he gets a decision from the State Personnel Board on his appeal, his appeal about the color vision being denied, they say we're going to uphold the California Youth Authority, and you're excluded, you're barred, and you can seek rehearing, which he did.

That is the first time -- well, actually, when he

seeks the rehearing and they reconfirm that they're going to enforce the color vision, when that is known, and that is early '97 is when he gets the decision from State Personnel Board, and then the reconfirming, I believe, is the summer of '97.

When the '98 job comes around, he now has been told very clearly through the State Personnel Board and through his re-request, and now he's also gone to the EEOC and sought their help, and through the EEOC has found out that the Youth Correctional Authority is standing by their policy. He finds out they're doing the exam in '98 and checks to see if they're enforcing that color vision for '98 or if they backed off enforcing the policy, sees if there's any way around it, finds out there's none, and now he's deterred from applying.

THE COURT: But what I want to know is did he take the test?

MR. ANTON: The vision test?

THE COURT: No.

MR. ANTON: Did he take the written test?

THE COURT: Yes.

MR. ANTON: Yes.

THE COURT: What happened?

MR. ANTON: He fell into the pool of thousands and thousands of people and hasn't gotten a notice to take a vision test.

THE COURT: Okay. So his color vision hasn't come into play in connection with this second job?

MR. ANTON: Almost. The color vision -- let me do the entire consideration here. The hiring list that they have, the use of the first hiring list is used for a long period of time. In fact, it overlaps when the exam for the second one takes place. Every time someone's hired off that, he's not hired off it because of color vision.

When the second test comes around and he does the written exam, you're correct, they have not sent him to

another color vision exam.

THE COURT: This is what I want to know. Have they denied him the job at any time since the original application because of his color blindness?

MR. ANTON: Only through the processes through the State Personnel Board and the EEOC. They've reconfirmed that denial.

You're absolutely right. As far as a formal statement you are denied from a job, that that formal statement was the March '96 formal statement. He has not gotten that type of formal statement for the late '96 job, which is the second job.

THE COURT: Well, then I want to know your argument, because there are two separate issues here. One under the Rehabilitation Act, whether you filed it within the statute of limitations, and the first one under the continuing violation doctrine on the ADA claim.

MR. ANTON: Go ahead with your question.

THE COURT: Because on the ADA claim, you have to file your charge with the EEOC less than 180 days after the conduct that you're complaining of.

MR. ANTON: Or 300.

THE COURT: Or 300?

MR. ANTON: Yes. Because of the deferral statute.

THE COURT: Okay.

MR. ANTON: But either way --

THE COURT: For each of those you rely on the continuing violation doctrine?

MR. ANTON: Correct.

THE COURT: But the continuing violation doctrine is a lot like the statute of limitations argument in that it only applies if a violation occurred within the statutory period.

So what is the violation that you're looking at within the statutory period?

MR. ANTON: Let me broaden it out a little bit, because the cases normally discuss that language, but

it's actually broader than that.

In the cases that have an issue of a policy, here you have policy which has for the '94 job, the first job, excluded him, he's applied in the second job, we don't know if it's because of their decision that they already had made through the State Personnel Board or something else, why he hasn't been given that. He's been well-known. He went through all the procedures. What is the reason why he hasn't gotten sent to a medical exam for the second job? We don't know. Was it because of the policy and they knew it was him because he'd gone through all these steps? We don't know. But the part that makes this easy so you don't have to really worry about the second job, and that is the cases that look at the policy, one, look at whether there is a deterrence from the application. And the deterrence, we have no question that he's -- he has presented evidence that the '98, the third job, he is deterred from applying for that because of the color

vision standard and everything he's gone through which confirms that the policy is being enforced.

THE COURT: Well, you know, that's my concern. You've got this language in the Fifth Circuit -- I think you're familiar with it -- Abrams vs. Baylor College of Medicine. And it's been cited by district courts in our circuit. "If the mere existence of a policy is sufficient to constitute a continuing violation, it is difficult to conceive of a circumstance in which a plaintiff's claim of an unlawful employment policy could be untimely."

MR. ANTON: Correct. I understand the problem with that. And here, the Ninth Circuit's also addressed the idea of whether deterrence -- many circuits have looked at the concept of deterrence -- has the policy kept you from applying. And here for the '98 or the third job, this guy has gone through hurdle after hurdle. He's gone through the State Personnel Board multiple times. He's gone through the internal EEO

office. He's gone to EEOC. It's been made absolutely clear to him that that policy exists.

He's interested in this job. In '98, he does extensive inquiry to find out whether the policy's being applied again. This is not some ghost or fabric situation. In Roberts vs. North American Rockwell, that circuit talked about, and the Ninth Circuit has agreed with it, the concept of deterrence.

THE COURT: Right. You're talking about Gutowsky.

MR. ANTON: Right. Gutowsky and also Sandoval.

THE COURT: Sandoval is a District Court case.

MR. ANTON: Gutowsky is exactly one of them.

THE COURT: All right. You're talking about that. In Gutowsky, the plaintiff was employed by the company, and the company actively deterred her from applying for a transfer up to the time that she left the company.

Now, that's different than somebody who's not employed who just every once in a while wants to check

and see if you still have that policy, and then he's going to bring it maybe five, ten years down the road. You see, that's why the Fifth Circuit said what it did, and that's why the courts in our circuit have cited to that language.

This is from the Central District in Sandoval. "In order to avoid exposing an employer to an open-ended period of liability," the court says, "it is appropriate that a plaintiff show some application of the illegal policy to him within the limitations period." Now, that's different than saying the policy still exists. The plaintiff has to show some application to him.

MR. ANTON: Right. And you have to figure out Gutowsky fits in with that. Because Gutowsky says that the environment was such so she no longer applied. And the Ninth Circuit, looking at that, said here are the facts that existed. That woman was subjected to them, and then she claimed that that environment, those acts,

made it so that she was deterred from applying. Here, I mean that's --

THE COURT: No, he wasn't deterred from applying. He actually did apply.

MR. ANTON: You mean our fellow?

THE COURT: Right.

MR. ANTON: Our fellow has applied multiple times.

THE COURT: You can't tell me he was deterred because he kept applying.

MR. ANTON: Yes, I can tell you he was deterred. And the reason I can tell you he was deterred is that the first two, he's still hopeful. The first one he didn't know about it because the policy didn't exist until after he took the test. The policy didn't exist for seven months after he took the test. They imposed that after he took it.

On the second one, he was on multiple appeals through the State Personnel Board and hadn't gotten a decision. He applied the second time while the State

Personnel Board, three or four months down the road, is going to issue their decision upholding the California Youth Authority.

The third time is when he's deterred. That's the 1998 job. That's the first time he now has everything in front of him, where the State Personnel Board is standing behind that decision. He also has, through the EEOC, the EEOC has contacted the California Youth Authority, said you're discriminating, and they said we're going to stand by it anyway.

Now, where this Court may have some concern is that's in 1998. But this circuit and other circuits have said that if you have later occurring events, those are ones that the Court must recognize and deal with.

THE COURT: I know, but that's later occurring events, not a continuing policy.

What event are you relying on?

MR. ANTON: I'm relying on three multiple events. The first application where he gets turned down. Then

with that one event, the multiple series where he appeals and they reconfirm it. The second one where he applies, and it is admitted that that policy still exists for that job. It exists still today. He applies. And the third one for the 1998 where he seeks to find out if the policy is still being applied, finds out it is, and is deterred from applying.

Under Ninth Circuit law, Domingo vs. New England Fish, which we've cited, and other Ninth Circuit cases, this Court is to look at those later events.

THE COURT: So under your theory, any plaintiff who let the statute of limitations run on him could simply make an inquiry of the defendant as to what his chances are of obtaining a job, and if they say, well, no better than they were the first time, then that's it. The statute of limitations is revived.

MR. ANTON: Well, kind of the question becomes then what -- I always love when I get those setups. That setup is not one that we have here. But even if we

had that, if you were able to find that that last one met the standard for the deterrence, that U.S. vs. Teamsters, one of the first cases we ever had from the U.S. Supreme Court where blacks are excluded from the Teamsters, and Justice Marshall wrote for the majority decision and said we're going to allow these people who haven't filed timely charges to bring those because the Teamsters made it so clear blacks were not going to get hired, that if you can show you've been deterred from applying, then that equals your rejection because the policy is there.

Here, this is no question that there's a policy that excludes this person from this job. Absolutely no question. He goes in there -- and the last one that you're talking about is at a time if he brings the complaint, and with that last one is timely, yes, the complaint is timely, and then the question becomes what's the scope of relief.

It may well be that the earlier events are things

that this Court can consider in whether the policy applies and everything else, but you can't get monetary relief for.

There's a difference between the question of relief and whether the complaint is something this Court can deal with.

THE COURT: All right.

MR. ANTON: That's why they have the continuing violation.

THE COURT: All right. As an aside, I'm really hesitant to ask this. I'm just curious.
How are you going to show that the inability to distinguish between various shades of green prevents someone from engaging in a major life activity, or what major life activity is it that they're prevented from engaging in?

MR. ANTON: Maybe I'm a smarter attorney than that. Maybe I go under the prong does the defendant regard this as a disability? And that's a prong I

intend to take in this case. That's not with this motion.

But here what we have is we have a job that's existed for 40 years without a color vision exclusion. We have, as a result of the ADA being passed, which is designed to bring people into the work force who have been excluded from disabilities, we have the California Youth Authority establishing and starting a color vision standard which excludes people. And in the 40 years that the job existed, there's never been a problem regarding anybody with color vision.

THE COURT: What major life activity do you think the employer perceives your client as being unable to perform?

MR. ANTON: Complete range of seeing. Seeing.

THE COURT: All right. Anything else?

MR. ANTON: Yes. Yes.

With the Rehab Act, which we have, the Ninth Circuit's made clear you have to borrow not only the

statute of limitations from the state but its tolling policies. And here what we have is a clear fit of the equitable tolling concept. There are three tests for California's equitable tolling. Timely notice to the defendant. That's one. Two, lack of prejudice to gather evidence. Three, good faith and reasonable conduct by the plaintiff in pursuing the writ that he did.

Here, for the Rehab Act claim, which equitable tolling applies and California law applies, we have timely notice out the wazoo with this plaintiff. He was immediately on the California Youth Authority when they turned him down, and they said go to the State Personnel Board appeal process and at the same time go to our own internal EEO office and make a discrimination complaint, both of which he did.

THE COURT: Do you think that's evidence that they intended to deceive him?

MR. ANTON: That's mixing -- I'll answer your

question second. Because that's mixing up the equitable estoppel theory and the equitable tolling theory.

THE COURT: You're correct. I'm getting ahead of you there.

MR. ANTON: And I, despite what the defendants say, I'm pushing the equitable tolling theory. They want me to use the equitable estoppel, because then I have to show that they're trying to mislead him. I think these people were just telling what they normally tell people.

The concept for equitable tolling is does the defendant know about the issue? Can they get evidence about it? Is there any prejudice? And is the fellow doing it in good faith?

All of those questions, not one of them have the defendants said has to be a no. Because none of them can be a no. He did exactly what they told him to do. He goes to them and says you're cutting me out because of my color vision. I don't like it. What do I do?

They say file a complaint with us. We'll process it. File it with the State Personnel Board. We'll process it. He does exactly that.

He goes through that whole thing. Then they say if you don't like this decision, file it with the EEOC. He does exactly that.

He is told from like the first week that they tell him you're out of here because of color vision up until the day this complaint is filed.

THE COURT: Did he file his EEOC complaint under the ADA or the Rehabilitation Act or both?

MR. ANTON: I don't believe that those things that people file with the EEOC have a box check for any of those laws. I believe there is no provision that says it's under Title VII or the ADA or whatever.

THE COURT: Oh.

MR. ANTON: So the answer is neither. It's a generic. It's because of color vision, and they excluded me, and that sort of thing.

So even if the continuing violation concept doesn't work, which I think it absolutely should here with this policy that's excluding him and other people up to this present day, even if you don't agree with that, the Rehab Act claim is equitably tolled. There is absolutely no reason that the defendants can say that they've been prejudiced or this hasn't been in good faith. He's done everything they have told him to do, and now they're saying he's untimely because he paid attention to us.

THE COURT: All right. Let me hear from the other side on this, because these technical arguments about tolling and what goes on before the EEOC are almost impossible to understand, because it's very hard to understand what the EEOC is doing. For the reasons that Mr. Anton says, I can't tell the difference between a Rehabilitation Act claim or a Title VII claim or an ADA claim. I don't know what the EEOC does. I don't know why they exist. So I have a lot of problems with these

arguments based on what goes on before the EEOC or the DFEH. They're very difficult.

And I have one in a trial that's pending right now before me. And I just wish that Congress would abolish the EEOC and prevent this silly requirement of exhausting remedies. The only remedy that people have is in federal court. The EEOC is just a necessary irritant.

All right. So let me hear what you have to say about this whole exhaustion thing or tolling.

MS. LAIRD: Tolling, in particular.

THE COURT: It's not exhaustion here. It's tolling.

MS. LAIRD: Right. First of all, I'd just point out that the Teamster's U.S. Supreme Court case was not a continuing violations case. So taking language from that does not support plaintiff's position here of applying continuing violation based on the 1998 deterrence.

In any event, plaintiff did not file any EEOC complaint within 300 days of that alleged deterrence either. Therefore, he hasn't exhausted his administrative remedies as to the deterral period.

On the California equitable tolling, I would direct the Court to the Fobbs vs. Holy Cross Health System Corp. case at 29 F.3d 1439. It is cited in my brief. In that case an individual requested the court to apply California's equitable tolling theory to his 1981 claim. He had also filed an untimely Title VII claim and requested tolling of his 1981 claim based on two theories. One, that he had filed a complaint with the Office of Civil Rights and suggested that that would toll the time period for the 1981 claim based on the same arguments made by Mr. Anton here. And the second, he argued that the internal review process, essentially the same argument that plaintiff is making here with the SPB, would toll the time period.

Under both arguments, the Ninth Circuit denied

application of equitable tolling on those facts because, number one, the 1981 claim that he was pursuing the remedies were not -- the remedies that he was seeking in the federal court were not the same remedies that the Office of Civil Rights could have given to the plaintiff. And under the internal view process, the effect of the tolling of the internal review process, the court simply said that that is against the Delaware State College vs. Ricks decision which explicitly states the --

THE COURT: Can the EEOC award general damages?

MS. LAIRD: I do not believe so, unless the government then takes the case and prosecutes it on behalf of the individual.

THE COURT: Then the remedy that the EEOC can award is never, ever the same as what a District Court can award, ever. That's the reason for my comment earlier. So I don't understand what you're saying. What about tolling from the time that he filed his

EEOC claim?

MS. LAIRD: Until the time that he filed his complaint in federal court?

THE COURT: Right.

MS. LAIRD: He doesn't suggest any reason why he should get tolling during that time period.

THE COURT: I thought he did.

MS. LAIRD: Well, by the time he had filed his EEOC complaint, the SPB had already issued its decision that the CYA's determination not to hire him based on his failing the color vision test was appropriate. So there's no explanation of why he waited then more than a year after that to file a federal Rehab Act Claim in this court.

THE COURT: But what about the argument that the time that his EEOC claim was pending ought to be counted towards equitable tolling?

MS. LAIRD: That's essentially the same argument that the plaintiff made in Fobbs. And unfortunately, I

didn't read this within the past 24 hours, and I don't want to state something is in here that's not. But the court basically addressed the same issue and found that that did not toll it. That the OCR complaint did not toll the period within which he could bring his 1981 claim.

THE COURT: I thought that was an internal grievance procedure.

MS. LAIRD: No. He made that argument on both grounds. One, the internal grievance procedure tolled it. The other, filing with the Office of Civil Rights tolled it. And court denied equitable tolling on the basis of both arguments.

THE COURT: Okay. I thought Fobbs stood for the proposition that under California's equitable tolling doctrine, the plaintiff may be able to toll the state statute of limitations when you have several formal legal proceedings, legal remedies, and he reasonably in good faith pursues one of them. I'll go back and look

at it.

MS. LAIRD: I can take a few minutes if the Court wouldn't mind.

THE COURT: No.

MS. LAIRD: Because I know I relied on this in making my argument that it's not appropriate for that tolling argument, that tolling theory, to be applied in this case.

THE COURT: I'm not sure I have a few minutes. Go ahead.

MS. LAIRD: Okay. Well, first the court says that -- the court doesn't really address the argument of tolling being inconsistent with federal policy with regard to the prong where the plaintiff's alleging that the OCR complaint tolled the limitations period. We're making the argument here that it is inconsistent with federal policy under the Ricks case, for the same reasons why it's inconsistent to toll it under the internal review process.

Secondly, in the Fobbs case, the court said that the issue was governed by the Johnson vs. Railway Express Agency case, that's 421 U.S. 454, in which the plaintiff filed charges with the EEOC and then was issued a right to sue letter and filed a timely Title VII action, and then also added a cause of action under 42 USC 1981. The court held that the plaintiff's Section 1981 action was time barred even though plaintiff delayed bringing the 1981 suit because he was waiting for the EEOC's recommendation because -- and it quotes from the Johnson case, "The remedies available under Title VII and under 1981, although related and although directed to most of the same ends, are separate, distinct, and independent."

Therefore, in the Fobbs case, the court held that Mr. Fobbs failed to meet two of the threshold requirements to have the California equitable tolling doctrine apply to his case.

THE COURT: All right. Thank you.

MS. LAIRD: Thank you, your Honor.

THE COURT: Anything else?

MR. ANTON: I just thought I'd make one or two comments on those. Since it is late, I'll try to be quick.

One, on Fobbs, the fact that the person is going through the Office of Contract Compliance, they have no role in addressing any individual issues. They have a role about whether the federal contractor has its contract pulled.

So unlike the EEOC, the DFEH, and all those organizations where the focus is the individual and their issue of discrimination, the Office of Contract Compliance has no role on that.

So what you talked about Fobbs saying under California law, one of several legal remedies, the Office of Contract Compliance isn't a remedy or doesn't have any role in that for an individual.

But here, each of the entities that Mr. Douglas

went to at the direction of the California Youth Authority has a remedy or a procedure for providing redress to individuals for employment decisions and discrimination.

The State Personnel Board, the written records that we supplied, it was the California Youth Authority who said for your complaints of discrimination, you file it with us, and then you go to the State Personnel Board if you don't agree with it. He was pursuing a legal remedy under the state procedure.

THE COURT: Under the ADA?

MR. ANTON: See, that's part of the problem with this. Even though this is a state entity and it goes to the EEO office of the state entity, they don't tell him to go to the EEOC for the ADA issues, which they know about, until he gets completely done with his State Personnel Board hearing, which happens to be after a year is over.

So because this individual relied on the direction

from the California Youth Authority and pursued the legal remedies available to him under the state law, the State Personnel Board --

THE COURT: For what kind of discrimination?

MR. ANTON: They can handle everything.

THE COURT: No. What was he complaining of?

MR. ANTON: Color vision discrimination. Exactly what we're doing with here.

THE COURT: Under the FEHA?

MR. ANTON: He wasn't sophisticated enough to know which laws it was under. He was saying you're discriminating against me because of color vision. That's not right. Reverse the California Youth Authority and give me a job. And that was the essence of the appeal. And the appeal decision is one of the exhibits that we submitted.

He was doing exactly what someone in good faith would do. He did exactly what the California Youth Authority told him to do.

Fobbs, even the case they cite, says California law applies, and if you're pursuing in good faith a state remedy, you have it tolled. Not a state remedy. A legal remedy. And he's doing that from day one up until the complaint was filed here.

THE COURT: All right. Thank you.

MS. LAIRD: Your Honor, just a point of clarification. I'm not sure where the Office of Contract Compliance came from. What I was speaking to is the Office of Civil Rights. It's the Office of Civil Rights where Mr. Fobbs filed his original administrative claim.

THE COURT: Thank you. This motion is taken under submission.

MS. LAIRD: Thank you, your Honor.

(Proceedings were concluded.)

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REPORTER'S CERTIFICATE
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STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

I, KELLY O'HALLORAN, certify that I was the official Court Reporter, and that I reported verbatim in shorthand writing the foregoing proceedings; that I thereafter caused my shorthand writing to be reduced to typewriting, and the pages numbered 1 through 28, inclusive, constitute a complete, true, and correct record of said proceedings:

COURT: U.S. District Court - Eastern District of California
JUDGE: Honorable WILLIAM B. SHUBB, Judge
CAUSE: Dossey vs. California of Youth Authority
Case No. Civ. S-98-1281
DATE: August 23, 1999

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California, on the 26th day of October 1999.

KELLY O'HALLORAN
CSR No. 6660